

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

MARY LEE SHARRER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 7:18-cv-356
	)	
UNITED STATES OF AMERICA, and	)	
UNITED STATES POSTAL SERVICE, and	)	
WALTER SOVA,	)	
	)	
Defendants.	)	

**MOTION FOR LEAVE TO FILE SURREPLY**

Plaintiff Mary Lee Sharrer, by counsel and pursuant to Local Rule 11(c)(1), hereby moves for leave to file a surreply to defendant United States of America's<sup>1</sup> reply memorandum in support of its Motion to Dismiss. In support of the motion, plaintiff states as follows:

1. United States of America moved to dismiss plaintiff's complaint on October 29, 2018 [ECF 20, 21]. Nowhere in the motion or the brief in support thereof did the United States make the argument that Count II, the negligent retention claim, should be dismissed because it involves a discretionary function. Instead, for the first time in its reply, filed on November 13, 2018, the United States make that argument, briefing the question almost over 9 pages [ECF 28].

2. Plaintiff has not previously had an opportunity to respond to this argument and seeks leave to do so now.

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<sup>1</sup> Again, the brief filed by defense is confusing. The opening brief was filed only on behalf of the United States of America. The reply brief was filed on behalf of the United States of America and United States Postal Service pursuant to the CM/ECF notice, but the reply brief itself is styled as if it is filed on the United States of America's behalf only.

3. Due to the Thanksgiving holiday, plaintiff seeks entry of an order permitting her until November 30, 2018 to file the foregoing surreply.

WHEREFORE, plaintiff Mary Lee Sharrer requests entry an order granting plaintiff the opportunity to file a surreply by November 30, 2018 addressing only the discretionary function argument raised by the United States in its reply.

Respectfully submitted,

MARY LEE SHARRER

By: /s/ Brittany M. Haddox  
Of Counsel

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Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of November, 2018, a true and accurate copy of the foregoing was electronically filed with the Clerk of Court through the CM/ECF system, which will send notification to counsel of record.

/s/ Brittany M. Haddox  
Brittany M. Haddox